

Message Text

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FOLLOWING UNCLASSIFIED HUMAN RIGHTS REPORT ON KENYA FOR
1978 IS KEYED TO FORMAT CONTAINED REF A:

ANNUAL HUMAN RIGHTS REPORT ON KENYA - 1978

A. KENYA'S POLITICAL SYSTEM AND ATMOSPHERE HAVE BEEN AMONG
THE MORE OPEN AND LIVELY IN AFRICA. THE KENYAN GOVERNMENT
TAKES PRIDE IN ITS LIBERAL CONSTITUTION WHICH PROTECTS THE
FUNDAMENTAL RIGHTS AND LIBERTIES OF ITS CITIZENS, AND IN
ITS INDEPENDENT JUDICIAL SYSTEM. INTERIM PRESIDENT DANIEL
ARAP MOI, WHO SUCCEEDED PRESIDENT KANYATTA UPON THE LATTER'S
DEATH AUGUST 22, 1978 HAS PLEDGED TO UPHOLD CONSTITUTIONAL
FREEDOMS. THUSFAR, THE TRANSITION HAS BEEN MARKED BY
ABSOLUTE RESPECT FOR THE CONSTITUTION AND HAS PROCEEDED IN
TOTAL CALM. WE HAVE MADE KNOWN TO THE NEW GOVERNMENT OUR
SATISFACTION WITH THIS DEVELOPMENT. THE
KENYATTA GOVERNMENT HAD AT TIMES USED DETENTION LAWS AND
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OTHER RESTRICTIVE POWERS, WHICH IT STRONGLY DEFENDED
AS NECESSARY TO MAINTAIN LAW AND ORDER AND PUBLIC
SECURITY. THESE POWERS WERE AT TIMES USED TO SILENCE
A FEW CRITICS OF THE SENIOR LEADERSHIP. WE WOULD HOPE
THE NEW GOVERNMENT WILL SEE FIT TO REVIEW CASES OF THOSE
PREVIOUSLY DETAINED UNDER THE PUBLIC SECURITY ACT
(APPROXIMATELY FIVE PERSONS).

B. 1. RESPECT FOR THE INTEGRITY OF THE PERSON, INCLUDING
FREEDOM FROM:

--A. TORTURE.

THERE IS NO INDICATION THAT TORTURE IS PRACTICED IN KENYA.

--B. CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT.

THERE ARE EFFECTIVE LEGAL SAFEGUARDS AGAINST CRUEL,
INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT, ALTHOUGH
PRISON CONDITIONS ARE OFTEN POOR.

--C. ARBITRARY ARREST OR IMPRISONMENT.

POLITICAL DETENTION IS PERMITTED UNDER THE PUBLIC SECURITY
ACT. DETAINEES MUST BE INFORMED OF THE REASONS FOR THEIR
DETENTION WITHIN FIVE DAYS OF ARREST, AND THEY HAVE THE
RIGHT TO REVIEW OF THEIR CASES EVERY SIX MONTHS BY A
SPECIAL TRIBUNAL. THE TRIBUNAL IS APPOINTED BY THE
PRESIDENT, MEETS IN CAMERA, AND ITS DECISIONS ARE NON-
BINDING. THE INCIDENCE OF POLITICALLY MOTIVATED ARRESTS
UNDER THESE PROVISIONS SINCE INDEPENDENCE HAS
BEEN LOW. RECENT CASES, HOWEVER, INCLUDE TWO PRO-
MINENT DISSIDENT MEMBERS OF PARLIAMENT ARRESTED IN THE
AFTERMATH OF THE MARCH 1975 MURDER OF A LEADING
PARLIAMENTARY CRITIC OF THE REGIME, THE ARREST IN
MAY 1977 OF A VOCAL PARLIAMENTARY BACKBENCHER WHO HAD
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ALLEGED CORRUPTION ON THE PART OF HIGH GOVERNMENT
OFFICIALS, AND THE ARREST AT THE END OF 1977 OF A
PROMINENT NOVELIST WHOSE WORKS STRONGLY CRITICIZED THE
KENYAN ELITE. THE TOTAL NUMBER OF PERSONS THOUGHT TO BE
DETAINED AT PRESENT UNDER PRESIDENTIAL ORDER IS ESTIMATED
AT FIVE.

--D. DENIAL OF FAIR PUBLIC TRIAL.

IN DETENTION CASES UNDER THE PUBLIC SECURITY ACT, THE
AUTHORITY OF THE REGULAR COURTS IS LIMITED TO ENSURING
COMPLIANCE WITH CERTAIN PROCEDURAL RIGHTS, THE COURTS
CANNOT QUESTION THE NEED FOR THE DETENTION. THIS EXCEPTION
ASIDE, THE RIGHT TO A FAIR PUBLIC TRIAL IS RESPECTED
IN KENYA.

---E. INVASION OF THE HOME.

THE GENERALLY HIGH STANDARD OF IMPARTIALITY OF THE KENYAN
COURTS HAS BEEN PARALLELED BY RESPECT FOR DUE PROCESS ON
THE PART OF KENYAN AUTHORITIES. AS A CONSEQUENCE, THE
SANCTITY OF THE HOME AND OTHER KEY CONCEPTS OF ENGLISH
COMMON LAW ARE RESPECTED IN KENYA.

2. GOVERNMENT POLICIES RELATING TO THE FULFILLMENT
OF SUCH VITAL NEEDS AS FOOD, SHELTER, HEALTH CARE AND
EDUCATION.

KENYA'S ECONOMIC DEVELOPMENT POLICIES, EMPHASIZING FREE
ENTERPRISE AND THE PROFIT MOTIVE, HAVE PRODUCED A RECORD
OF ECONOMIC GROWTH THAT IS UNUSUALLY HIGH FOR AFRICA.
THE GOVERNMENT HAS DEVELOPED A NUMBER OF POLICIES
RESPONDING DIRECTLY TO THE FUNDAMENTAL NEEDS OF THE
POORER SEGMENTS OF THE POPULATION. THESE PROGRAMS
INCLUDE BOTH REGULATORY MEASURES, SUCH AS CONTROLS ON
THE PRICE OF BASIC FOODSTUFFS, AND DEVELOPMENT PROGRAMS
AIMED AT PROVIDING LOW-COST HOUSING, EMPLOYMENT GENERA-
TION IN THE URBAN AREAS AND IMPROVEMENT OF CONDITIONS FOR
SMALLHOLDERS IN THE RURAL AREAS. HEALTH CARE AND
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EDUCATION ARE PRIORITY AREAS FOR GOVERNMENT DEVELOPMENT
SPENDING. MAJOR GAPS STILL EXIST, HOWEVER, BETWEEN THE
HAVES AND THE HAVE NOTS IN KENYA.
HIGH-LEVEL CORRUPTION IS A PROBLEM IN KENYA. IT IS NOT
CLEAR, HOWEVER, TO WHAT EXTENT CORRUPTION HAS ACTUALLY

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DIVERTED RESOURCES AWAY FROM USES WHICH WOULD RAISE THE
OVERALL STANDARD OF LIVING AND BENEFIT THE POOR MAJORITY.

3. RESPECT FOR CIVIL AND POLITICAL LIBERTIES, INCLUDING:

--A. FREEDOM OF THOUGHT, SPEECH, PRESS, RELIGION
AND ASSEMBLY.

FREEDOM OF EXPRESSION AND COMMUNICATION IN KENYA CAN
BE RESTRICTED UNDER VARIOUS SECTIONS OF THE PENAL CODE.
THE EXISTENCE AND OCCASIONAL USE OF THE DETENTION LAWS
EXERT AN INHIBITING INFLUENCE ON PUBLIC EXCHANGE OF
VIEWS ON SENSITIVE POLITICAL TOPICS. THE GOVERNMENT
OPENLY DISCOURAGES STUDENT POLITICAL ACTIVISM. ALTHOUGH
THERE IS NO FORMAL CENSORSHIP OF NEWS COPY, GOVERNMENT
GUIDELINES ARE ISSUED ON POLITICALLY SENSITIVE ISSUES
AND ARE USUALLY OBSERVED BY THE MEDIA. HOWEVER,
KENYA'S PRESS IS ACTIVE AND ASSERTIVE IN REPORTING AND
COMMENTING ON INTERNAL DEVELOPMENTS.
FREEDOMS OF ASSEMBLY AND ASSOCIATION ARE LIMITED BY THE
PUBLIC ORDER AND POLICE ACT WHICH GIVES LOCAL ADMIN-
ISTRATIVE AUTHORITIES AND POLICE WIDE POWERS TO CONTROL
PUBLIC MEETINGS. IT IS AN OFFENSE NOT ONLY TO CONVENE
AN UNLICENSED MEETING, BUT ALSO TO ATTEND ONE. WITH
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THESE POWERS, THE GOVERNMENT CAN PREVENT MEETINGS BY
POLITICAL OPPONENTS. THE ACT HAS BEEN USED ONLY IN A
FEW CASES. SIMILARLY, UNDER THE SOCIETIES ACT, THE
GOVERNMENT CAN REFUSE TO REGISTER ANY SOCIETY THAT IT
BELIEVES MAY PURSUE ACTIVITIES HARMFUL TO PUBLIC SECURITY.
ONE OPPOSITION POLITICAL PARTY REMAINS PROSCRIBED UNDER
THIS ACT, AND THE GOVERNMENT USED THE SAME POWER TO BAN
THE JEHOVAH'S WITNESSES IN 1973. IN THE LATTER CASE
THE GOVERNMENT LATER REVOKED THE BAN WHEN THREATENED
WITH A COURT TEST OF THE CONSTITUTIONALITY OF THE
SOCIETIES ACT.
KENYA'S TRADE UNION MOVEMENT IS ACTIVE AND VOCIFEROUS.
THERE IS FULL FREEDOM OF RELIGION IN KENYA

--B. FREEDOM OF MOVEMENT WITHIN THE COUNTRY, FOREIGN
TRAVEL AND EMIGRATION.

UNDER THE PRESIDENTIAL DETENTION POWER, INDIVIDUALS MAY
BE RESTRICTED IN THEIR MOVEMENTS WITHIN THE COUNTRY,
BUT THIS POWER HAS NOT BEEN USED IN RECENT YEARS.
FOREIGN TRAVEL AND EMIGRATION ARE NOT RESTRICTED.

--C. FREEDOM TO PARTICIPATE IN THE POLITICAL PROCESS.

KENYA HAS ONLY ONE POLITICAL PARTY, ALTHOUGH
THERE IS NO LAW AGAINST THE FORMATION OF OTHERS. THE
GOVERNMENT HAS SUBSTANTIAL POWERS TO RESTRICT POLITICAL
ACTIVITY, AS SET FORTH IN 3A ABOVE. AT THE SAME TIME,
POLITICAL ACTIVITY WITHIN THIS FRAMEWORK IS OPEN TO ALL
KENYANS AND IS VIGOROUS. PARLIAMENTARY ELECTIONS IN

1969 AND 1974 FEATURE MANY LIVELY CONTESTS BETWEEN
MULTIPLE CANDIDATES AND RESULTED IN THE DEFEAT OF MANY
INCUMBENTS.

4. GOVERNMENT ATTITUDE AND RECORD REGARDING INTER-
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NATIONAL AND NON-GOVERNMENTAL INVESTIGATION OF ALLEGED
VIOLATIONS OF HUMAN RIGHTS.

THE KENYAN GOVERNMENT HAS IN THE PAST BARRED ENTRY
INTO KENYA BY CERTAIN JOURNALISTS WHO HAVE BEEN
CRITICAL OF PRESIDENT KENYATTA AND HIS FAMILY. KENYAN
ATTORNEY GENERAL CHARLES NJONJO HAS ON SEVERAL
OCCASIONS BEEN CRITICAL OF INTERNATIONAL INVESTIGATORY
BODIES SUCH AS AMNESTY INTERNATIONAL, AND AS
RECENTLY AS JUNE 27, 1978 WARNED THIS ORGANIZATION TO
REFRAIN FROM INTERFERING IN GOK POLICIES ON DETENTIONS
UNDER THE PUBLIC SECURITY ACT. BASED ON PAST EXPERIENCE,
WE WOULD NOT EXPECT THE GOK TO COOPERATE WITH BODIES
WHOSE PRINCIPAL PURPOSE WOULD BE TO INVESTIGATE THE
DETENTION SYSTEM AND OTHER ASPECTS OF THE GOVERNMENT'S
SECURITY POWERS, ALTHOUGH IT IS FAIR TO SAY THE NEW
GOVERNMENT IS UNTRIED IN THIS AREA.

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